20. 10.04.2019 Heard Sri Mohanty for the petitioner and Standing Counsel for Commercial Tax.

By way of this writ petition, the petitioner has challenged the inaction of the respondents whereby in spite of two orders of this Court, is being denied the refund, this Court while admitting the matter passed the following order:

Order dated 7.12.2001

> "Admit.
>
> Learned Additional Standing Counsel for the Revenue, Shri Narasingh accepts notice on behalf of opposite parties. Requisite number of copies of writ petition shall be served on him by tomorrow. Two months' time is granted to file counter affidavit. Put up this matter thereafter."

Again on 25th of November, 2003, time was granted to the Opp. Parties to file counter and the matter was part heard in the year 2004. Till today no counter is filed.

The case of the petitioner is that Annexure-1 passed by the Sales Tax Officer, Keonjhar Circle, Keonjhar on 20th August, 2001 which is in total disregard of the direction contained in the order of this Court and the Assessing Officer or the Commercial Tax Officer has refused to refund on the ground of unjust enrichment. The petitioner who was originally known as Ipitata Sponge Iron Ltd. has approached this Court by way of writ petition bearing O.J.C. No.6198 of 1994, disposed of by this Court by the decision reported in 122 STC 259. In the writ petition bearing O.J.C.No. 6198 of 1994 decided on 5th May, 1995 wherein Division Bench of this Court observed as follows:

> "22. In view of the foregoing reasons we direct the sales tax authorities to reconsider and revise the impugned assessment orders being Annexures 1 & 2 to

the writ petition taking the benefits of 1980 Policy and 1989 Policy as available to the petitioner-company. If the petitioner-company raises any claim about the period of entitlement under the 1989 Policy and the items on which exemption/deferment is available, such claim will also be considered and disposed of at the time of passing revise assessment orders. The concerned authorities will also dispose of the refund application in the light of the observations made in this judgment. The authorities will give due opportunity of hearing to the assesses-company and complete the entire exercise within a period of six weeks from the date of communication of this order. The writ petition is thus disposed of. No order as to costs.

Direction of this Court not being worked out by the authorities again they have to approach to this Court in O.J.C.No.6198 of 1998 which is again disposed of vide order, reported in (2001) 122 STC, 354. Paragraph 24 and 25 of therein reads as such:-

"24. Thus, the question of unjust enrichment being a pure question of fact, the same cannot be adjudicated under writ jurisdiction. The impugned order, annexure-5, reveals a complete non-application of mind. The authorities while disposing of the representation filed by the petitioner have lost sight of the specific direction issued by this Court, and thus, we have no hesitation to hold that the authorities have not applied their mind in the way they were required to do in consonance with the direction of this court in O.J.C. No.6198 of 1994 (Ispitata Sponge Iron Ltd. V. State of Orissa, (2001) 122 STC 259). As disputed questions of facts are involved which need to be determined for arriving at a just

decision, it would not be proper for us to delve into the matter at present and it would be just and proper to direct the authorities to apply their mind and to dispose of the representation afresh sacrosantly following the directions issued by this Court in O.J.C. NO.6198 of 1994 (Ipitata Sponge Iron Ltd. Vs. State of Orissa, (2001 122 STC 259 and the law enunciated in the preceding paragraphs.

25. In view of the discussions made above, we direct the sales tax authorities to dispose of the refund application keeping in mind the ratio laid down by this court in O.J.C. NO.6198 of 1994 (Ipitata Sponge Iron Ltd. Vs. State of Orissa, (2001) 122 ST 259). It is needless to say that the authorities will give adequate opportunity to the petitioner-company and allow it to file such documents as deemed just and proper for deciding the issue. In view of the fact that the matter is pending since long, we direct that the entire exercise is to be completed within a period of three months from the date of receipt of copy of this order. With the aforesaid observations and directions the writ application is disposed of.

Counsel for the petitioner has pointed out from the record that while admitting the matter it was specifically observed that the petitioner will pay the Tax and in return it will be shown as disputed Tax and it was also observed that in the event the petitioner succeeds, the petitioner is entitled for refund with interest will be considered.

Counsel for the petitioner has taken us to page 59, paragraph-14 of page 59, paragraph 17 of page-62 and Annexure-3 more particularly and contended that the respondents may be directed to refund the amount and the impugned order at Anneure-1 be

quashed and set aside. Justifying his claim, petitioner has also relied on a decision reported in (2016) 13 Supreme Court Cases 28 wherein the contention of the respondents that the price which was collected was inclusive of tax has been considered by the Supreme Court in paragraphs 17, 19 and 24 therein.

Counsel for the respondents in spite of several orders, did not file counter but has argued justifying the order on the ground of unjust enrichment.

From the record, it seems the confusion arose because of one letter which has been sent to Usha Martin Industries page 39 which is reproduced herein as follows:-

"USHA MARTIN INDUSTRIES
USHA Alloys & STEELS DIVISION)
Post Box-1 Jamshedpur 831001, India
Phone (91) (0657) 407231/233/356,408911, 409074
Fax (91) (0657) 200504, 408912 Cable,Usrarope
E-Mail: used Jrs@ ubest. Sprintring.sms.vsnl.net.in
Ref :RSS/ACCTS/2001
Date:15.02.2001

REGD WITH A/D

The Commercial Tax Officer
Keonjhar Circle, Ward-A
Keonjhar.

Dear Sir,

Sub : Confirmation of collection of CST by
M/s.Tata Sponge Iron Ltd.

We have received your letter No.443/CT dt.2.2.2001 today for the above referred subject. In this connection we are confirming that party has not charged CST separately. The rate charged in the bill inclusive of tax. The C. Form No.BG/2C-427956 dt.1-6-99 issued to party for Rs.9,61,20,244.50 for the year 1998-99.

Thanking you,
Yours faithfully,
For USHA MARTIN INDUS.(UASD)
DIVISION OF USHA BELIRON LTD.
Sd/R.S.Sharma
(RS SHARME)
Dy.Manager (Accounts)"

Several other correspondences are there which clearly states that the CST has been collected but tax was not collected from the consumer. On plain reading of the earlier two orders of this Court, it becomes clear that the Officer was required to refund the amount but with regard to deliberate delay, the refund issue has come up altogether to a new case which was not there in the earlier case. The unjust enrichment question will not come in as much as the order was passed by this Court permitting the petitioner required to file return with indication of disputed tax, which the petitioner has done and in view of the decision of the Supreme Court, contention that the price inclusive of tax will not disentitle the petitioner for refund. Therefore, the order at Annexure-1 is required to be quashed and set aside.

The amount of Rs.08,43,23.183 and Rs.23,94,522 under OST Act are required to be directed to be refunded within a period of four weeks along with 8% interest will be paid from the 1st April, 1998 in first item and in second item from the 1st of April, 1999.

The above interest will be paid from the date of assessment.

Issue urgent certified copy of this order be granted on proper application.

…….
K.S.JHAVERI,
(CHIEF JUSTICE)

…….
BISWANATH RATH,
(JUDGE)

Sks & SP